STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 12, 2007

03od-302

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

Oahu

Rescind Prior Board Action of October 24, 2003, Agenda Item D-20, Grant of 55-year Term, Non-Exclusive Easement to Michael A. Pietsch and Judy B. Pietsch for Seawall Purposes, Wailupe, Honolulu, Oahu, Tax Map Key: (1) 3-6-01:22, seaward.

REMARKS:

On October 24, 2003, under agenda item D-20, the Board approved a 55-year term, non-exclusive easement to Michael A. Pietsch and Judy B. Pietsch for seawall purposes. During the preparation of the DAGS survey map, several questions were raised regarding the boundaries. While researching early survey files, questions regarding the construction of the seawall over the old fishpond wall, original survey field notes and the Land Court description of the boundary had to be resolved. After researching the data and the report by the applicant's consultant, Kai Hawaii, who described the methodology of seawall construction during that era, the State surveyor determined that " … the State of Hawaii does not own the land under the current seawall, including the seawall apron (also referred to as a footing), fronting the subject property." (See Exhibit A).

There was a deposit approved by the Board and later accepted by staff in order to facilitate the initiation of the shoreline certification process. Staff requests approval to refund the entire deposit amount and encroachment fine ($22,155.00 and $500.00).

RECOMMENDATION:

That the Board:

1. Rescinds its prior Board action of October 24, 2003, agenda item D-20;

2. Approve a refund of the entire deposit amount; and

3. Such other terms and conditions as may be prescribed by the Chairperson to protect the State's interests.

Respectfully Submitted,

Al Jodar
Land Agent

APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson

LINDA LINGLE
GOVERNOR

RUSS K. SAITO
Comptroller

KATHERINE H. THOMASON
Deputy Comptroller

STATE OF HAWAII
DEPARTMENT OF ACCOUNTING
AND GENERAL SERVICES
SURVEY DIVISION
P.O. BOX 119
HONOLULU, HAWAII 96810-0119

Response Refer to:
O-43(06)
O-46(06)

October 17, 2006

MEMORANDUM

TO: Russell Y. Tsuji, Administrator
DLNR, Land Division

ATTN: Al Jodar, Land Agent

FROM: Reid K. Siarot, State Land Surveyor
DAGS, Land Survey Division

SUBJECT: Seawall Easement
Applicant: Michael and Judy Pietch
Wailupe Honolulu, Oahu, Hawaii
Fronting Parcel 22 of TMK: 3-6-01
PSF No. 03OD-302

RECEIVED
LAND DIVISION
2006 OCT 18 A 9:25

Reference is made to your survey request dated January 31, 2006 (Item D-20 approved October 24, 2003).

The applicant provided a report by Kai Hawaii, Structural & Forensic Engineers that alleges the seawall was built on the old Wailupe Fish Pond wall which was conveyed by Grant 4728. Assuming that the makai boundary was determined by the entire original Wailupe Fish Pond wall structure, the outermost edge of the apron would be the boundary defining the limits of Grant 4728. Based on Kai Hawaii's expert opinion, the State of Hawaii does not own the land under the current seawall, including the seawall apron, fronting the subject property. A copy of the report and book titled *Ancient Hawaiian Fishponds* provided by applicant is enclosed for your information.

Should you have any questions, please contact me at 586-0390.

Enclosures

EXHIBIT "A"

03OD-302

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

October 24, 2003

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF 03od-302

Oahu

Grant of 55-year term, Non-Exclusive Easement to Michael A. Pietsch and Judy B. Pietsch for Seawall Purposes, Wailupe, Honolulu, Oahu, Tax Map Key: 3-6-01:22, seaward.

APPLICANT:

Michael A. Pietsch and Judy B. Pietsch, as Tenants by the Entirety, whose mailing address is 292 Wailupe Circle, Honolulu, Hawaii 96821.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands situated at Wailupe, Honolulu, Oahu, identified by Tax Map Key: 3-6-01:22, seaward, as shown on the attached map labeled Exhibit A.

AREA:

147 square feet more or less.

ZONING:

State Land Use District: Conservation

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act

DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: YES ____ NO __x__

CURRENT USE STATUS:

Vacant and unencumbered.

CHARACTER OF USE:

Right, privilege and authority to use, repair and maintain seawall

APPROVED BY THE BOARD OF LAND AND NATURAL RESOURCES AT ITS MEETING HELD ON October 24 2003

ITEM D-20

purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser, subject to review and approval by the Chairperson.

LEASE TERM:

55 years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

During a recent inspection, Office of Conservation and Coastal Land (OCCL) staff observed the subject seawall was built before 1974 i.e. prior to the enactment of the environmental assessment law.

DCCA VERIFICATION:

Not required for individuals

APPLICANT REQUIREMENTS:

Applicant shall be required to:

1) Pay for an appraisal to determine one-time payment; and
2) Provide survey maps and descriptions according to State DAGS standards and at Applicant's own cost.

REMARKS:

The applicant wants to renovate the subject property. By a survey map dated September 3, 2003, a portion of the seawall is found beyond the recorded boundary, constituting an encroachment. The encroaching area is about 147 square feet (see Exhibit B).

The Office of Conservation and Coastal Land (OCCL) staff has determined that the issuance of an easement for the encroaching portion of the seawall would have no adverse impacts on the natural resources, including beach resources and therefore has no objections to the issuance of an easement. The OCCL staff reviewed the applicants' encroachment history and visited the area. The OCCL staff recommended an easement be issued by the Board (see OCCL letter, Exhibit C).

The applicant also intends to build a pier at the subject property. On September 12, 2003, the Board withdrew the item for the Conservation District Land Use Permit regarding the pier pending the resolution of the encroachment issue. The applicant plans to start

renovating their house in January 2004.

In the past, the Board authorized the collection of a deposit, which represents the estimated consideration for the disposition plus necessary charges and fines. The intent is to facilitate the applicant to obtain a shoreline certification and building permit. The deposit is only an estimate figure. Final figure will only be available upon a formal appraisal conducted on the subject request. Upon execution of the easement document, the deposit will be applied toward the consideration and any other charges. Any difference will be refunded to the applicant or vice versa. Staff recommends the Board authorize the collection of $21,655.00 from the applicant, which represents the estimated consideration of the subject easement request ($21,600), document ($30) and map ($25) fee.

Staff recommends imposing a fine, pursuant to Section 171-6(12), for the seawall encroachment constructed without prior consent by the State based on the encroachment being greater than the 100 square foot threshold as approved by the Board at its June 28, 2002 meeting under agenda item D-17. There was no fine for violation of the Conservation District land use, since the seawall was in existence in 1947, and prior to the establishment of the Conservation District in 1964.

No departments or agencies (other than OCCL staff of the department) were asked to comment on the encroachment, as the proposed use is not different from the existing use. Staff has no objections to the request.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Authorize the Department to accept a deposit in the amount of $21,655.00 from the applicant pursuant to the conditions set forth in the Remarks Section above in relation to the issuance of a term non-exclusive easement for seawall purpose.

3. Subject to the Applicant fulfilling all of the Applicant requirements listed above, authorize the issuance of a 55-year term, non-exclusive easement to Michael A. Pietsch and Judy B. Pietsch covering the subject area for seawall purposes under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

   A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;

B. Review and approval by the Department of the Attorney General;

C. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State; and

D. Any shoreline hardening policy that may be adopted by the Board prior to execution of the grant of easement.

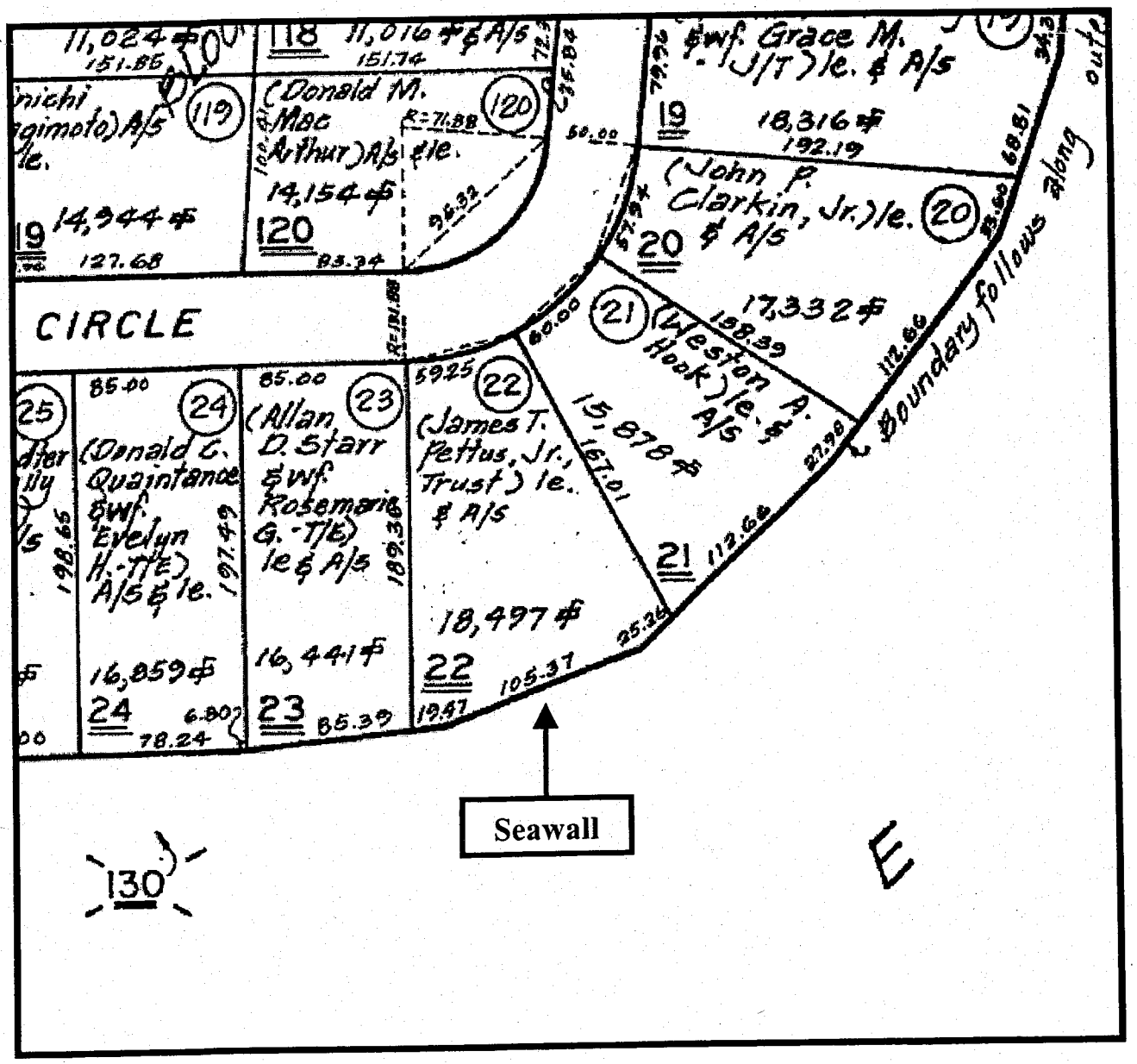
4. Impose a fine of $500 for encroachment upon public lands without Government authorization pursuant to Section 171-6(12) HRS.

Respectfully Submitted,

Robert Ing
Land Agent

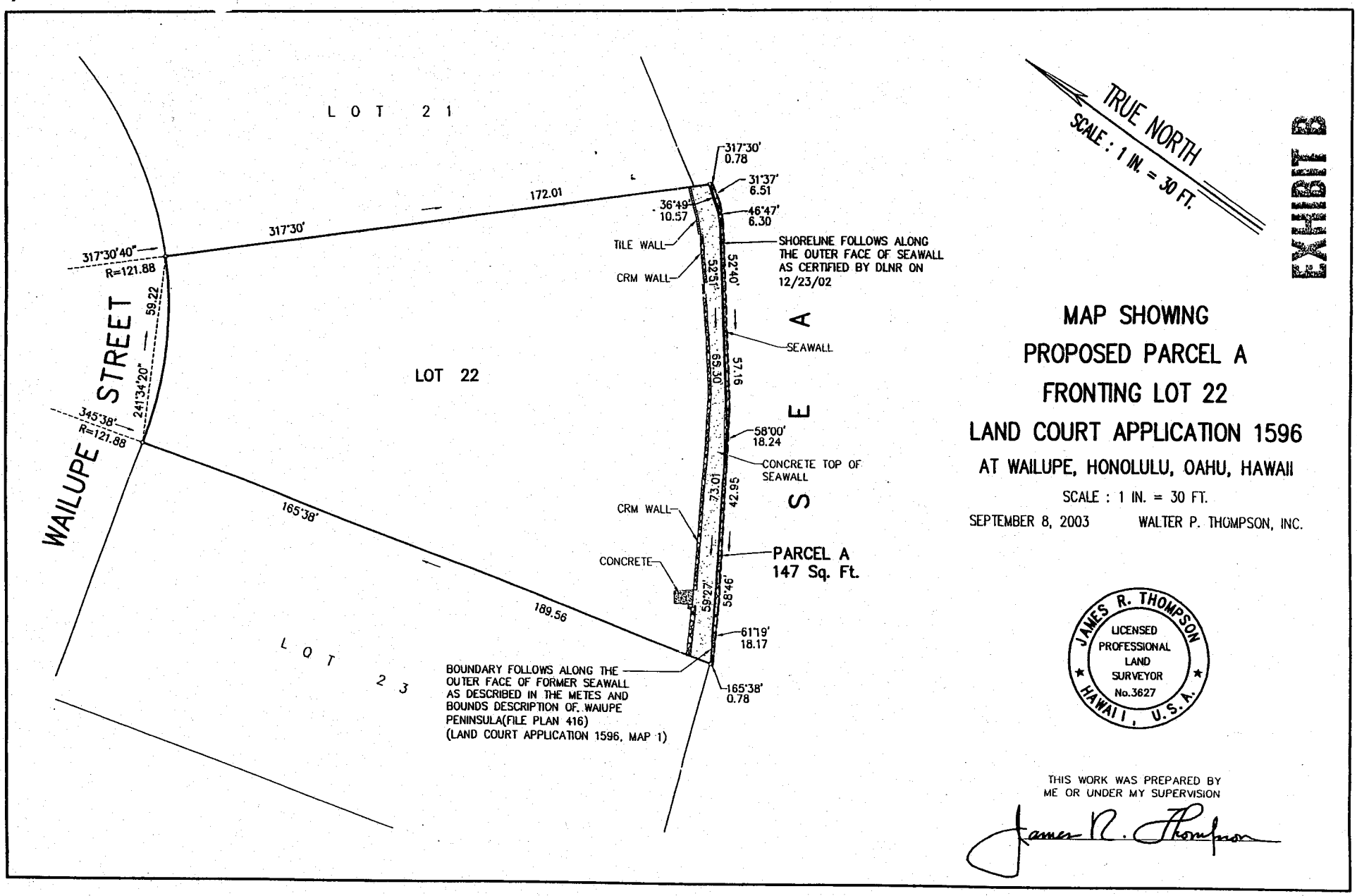
APPROVED FOR SUBMITTAL:

Peter T. Young, Chairperson



(1) 3-6-001:022 Seaward

EXHIBIT A


LOT 21
LOT 22
LOT 23
WAILUPE STREET
317°30'
172.01
317°30'40"
R=121.88
59.22
241°34'20"
345°38'
R=121.88
165°38'
189.56
317°30'
0.78
31°37'
6.51
36°49'
10.57
46°47'
6.30
TILE WALL
CRM WALL
SHORELINE FOLLOWS ALONG THE OUTER FACE OF SEAWALL AS CERTIFIED BY DLNR ON 12/23/02
52°40'
52.51
SEAWALL
65.30
57.16
58°00'
18.24
CONCRETE TOP OF SEAWALL
73.01
42.95
CRM WALL
CONCRETE
PARCEL A
147 Sq. Ft.
59°27'
58°46'
61°19'
18.17
165°38'
0.78
BOUNDARY FOLLOWS ALONG THE OUTER FACE OF FORMER SEAWALL AS DESCRIBED IN THE METES AND BOUNDS DESCRIPTION OF WAIUPE PENINSULA(FILE PLAN 416) (LAND COURT APPLICATION 1596, MAP 1)
TRUE NORTH
SCALE : 1 IN. = 30 FT.
EXHIBIT B
MAP SHOWING
PROPOSED PARCEL A
FRONTING LOT 22
LAND COURT APPLICATION 1596
AT WAILUPE, HONOLULU, OAHU, HAWAII
SCALE : 1 IN. = 30 FT.
SEPTEMBER 8, 2003
WALTER P. THOMPSON, INC.
JAMES R. THOMPSON
LICENSED PROFESSIONAL LAND SURVEYOR
No.3627
HAWAII, U.S.A.
THIS WORK WAS PREPARED BY ME OR UNDER MY SUPERVISION
James R. Thompson
0212301.dwg/1411.70/
TAX MAP KEY : 3 - 6 - 01 : 22
10" X 15" = 1.05 Sq. Ft.

LINDA LINGLE
GOVERNOR OF HAWAII

PETER T. YOUNG
CHAIRPERSON
BOARD OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT

DAN DAVIDSON
DEPUTY DIRECTOR - LAND

ERNEST Y.W. LAU
DEPUTY DIRECTOR - WATER

AQUATIC RESOURCES
BOATING AND OCEAN RECREATION
BUREAU OF CONVEYANCES
COMMISSION ON WATER RESOURCE MANAGEMENT
CONSERVATION AND COASTAL LANDS
CONSERVATION AND RESOURCES ENFORCEMENT
ENGINEERING
FORESTRY AND WILDLIFE
HISTORIC PRESERVATION
KAHOOLAWE ISLAND RESERVE COMMISSION
LAND
STATE PARKS

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
OFFICE OF CONSERVATION AND COASTAL LANDS

POST OFFICE BOX 621
HONOLULU, HAWAII 96809

REF:PB:MM

SEP 15 2003

File Number Encroachment: OA-04-07

James R. Thompson, LPLS
for Michael A. Pietsch
President
Walter P. Thompson, inc.
Surveying & Mapping
P.O. Box 3551
Honolulu, HI 96801

Dear Mr. Thompson:

Subject: Shoreline Encroachment (Seawall) at 292 Wailupe Circle, Honolulu, Oahu, Hawaii, TMK: (1) 3-6-01:22

Office of Conservation and Coastal Lands (OCCL) staff has reviewed the submitted documentation for this case. The encroachment in question is a seawall located Makai of the homeowner's property line. The structure is Makai of the metes and bounds of the parcel in question and thus constitutes an encroachment onto State of Hawaii land. The total area of the encroachment is approximately 147 square feet.

During the April 2, 2003 site visit staff observation confirm that the encroachment in question is long established. OCCL staff's review a survey map entitled Land Court Application 1596 from the Department of Taxation, Property Technical Office, Tax Maps Branch that appears to show the encroachment in existence as of October 1947.

OCCL staff was unable to locate any construction permit or other land use authorization permits at the State or at the City and County of Honolulu for the seawall. However, DLNR does not consider the encroachment a Conservation District violation and will not be asking for an after-the-fact Conservation District Use Application to cure this matter, since State Land Use District boundaries were not in existence in 1947, and as a consequence the landowners could not have committed a Conservation District violation if they constructed their structure(s) prior to the establishment of the Conservation District in 1964.

EXHIBIT C

The Board of Land and Natural Resource (BLNR) recently established a policy to allow the disposition of shoreline encroachments by either removal or issuance of an easement. In carrying-out this policy, the Department established criteria to guide decision-making over specific cases. The criteria are as follows:

1. Protect/preserve/enhance public shoreline access;
2. Protect/preserve/enhance public beach areas;
3. Protect adjacent properties;
4. Protect property and important facilities/structures from erosion damages; and
5. Apply "no tolerance" policy for recent or new unauthorized shoreline structures

In addition, the Department developed a "Shoreline Encroachment Information Sheet" that is intended to provide the State with additional information to guide the Department's decisions on the disposition of shoreline encroachments. This form has been completed and submitted.

Surrounding Land Uses:
It was observed during the site visit that surrounding uses are residential. The Wailupe Circle residences all share a contiguous seawall.

Beach Resources:
OCCL determined that the tidal area is a mixture of reef ruble and dredged material.

Public Access:
There is no public access to the immediate shoreline area.

Effect of Removing the Encroachment on:
Beach Resources: The removal of the encroachment would have no benefit to the public. There is no pedestrian access and no beach at the site. Public recreation such as fishing, diving, surfing and boating takes place offshore of the parcel.

Public Access: OCCL staff has determined that public access would not be enhanced by removal of the encroachments.

Affect on Adjacent Properties: Removal of the encroachment would affect the two abutting landowners as the seawall in question also fronts their parcels.

Upon review and careful consideration of the information gathered in this case, staff has determined that the encroachment of 147 square feet would have no adverse impacts on natural resources, including beach resources. Therefore, the OCCL has no objections to the encroachment remaining in place. Pursuant to Chapter 171, you are required to obtain a land disposition (normally a term

easement in these cases) for the use of public lands, and you may be subject to a $500 fine for the encroachment. Please contact the Oahu District Branch at 587-0433 regarding the processing of an easement. If you do not pursue an easement, you will be required to remove the encroachment.

We hope this letter helps resolve some of the outstanding issues regarding your property. Please feel free to contact Matthew Myers, of the OCCL at 587-0382.

Aloha,

Dierdre S. Mamiya
Acting Administrator
Office of Conservation
and Coastal Lands

Cc: Oahu Board Member
Oahu District Land Office
Chairperson's Office
Patti Edwards, DOCARE

Title Guaranty of Hawaii, Inc.

235 QUEEN STREET, HONOLULU, HI 96813 • P.O. BOX 3084, HONOLULU, HI 96802
TELEPHONE: (808) 533-6261

August 31, 2006

Reid Siarot
State Land Surveyor
1151 Punchbowl Street, Room 210
Honolulu, HI 96813

Re: Seawall at 292 Wailupe
TMK (1) 3-6-001-022

Dear Reid:

Thank you for meeting with me and Joanna Kaalele last month regarding my seawall issue.

I also met with Ken Hayashida of Kai Hawaii on site at 292 Wailupe Circle and engaged his services to perform a study of the seawall and provide an expert opinion.

Attached please find Mr. Hayashida's letter dated 8/10/06 which provides the results of his research and is accompanied by sketches and a photograph of a typical Hawaiian seawall.

I hope Mr. Hayashida's findings will provide sufficient information to facilitate the settlement of this encroachment issue and enable us to finalize this matter. I look forward to hearing of the state's decision in the near future.

Please feel free to call me (521-0259) should you have any questions.

With aloha,

Michael A. Pietsch
President & C. E. O.

MAP:yrn

cc: DLNR, Land Division (Morris M. Atta)

KAI HAWAII
STRUCTURAL & FORENSIC ENGINEERS

Ken K. Hayashida, P.E.
Thang T. Pham, P.E.
Michael P. Hunnemann, P.E.

August 10, 2006

Mr. Michael A. Pietsch
P. O. Box 3084
Honolulu, Hawaii 96802

Dear Mr. Pietsch

Subject: Seawall at Wailupe, Oahu, TMK: 3-6-01:22

We have reviewed the condition of the seawall fronting your property on August 10, 2006. The seawall appears to be of grouted rock masonry construction with a protection apron consisting of rocks with a grout cap. The main retaining wall was probably constructed in the 1940's but there are no construction plans or details of the seawall. We have attached structural wall section sketches of how we think the original and current seawall may have been constructed. There is a main retaining wall section with a lower front apron or wall for toe protection. The lower front apron or wall is an integral and necessary portion of the wall since it provides the toe protection from wave action. This was the way seawalls were typically constructed, please see attached exert from the book Pohaku by David and Scott Cheever. Should there be questions, please call.

Sincerely,

Ken K. Hayashida, P. E.
President-KAI Hawaii Inc.

31 N. Pauahi Street * 2nd Floor * Honolulu * Hawaii * 96817
Telephone: (808) 533-2210 * Facsimile: (808) 533-2686 * E-mail Address: mail@kaihawaii.com

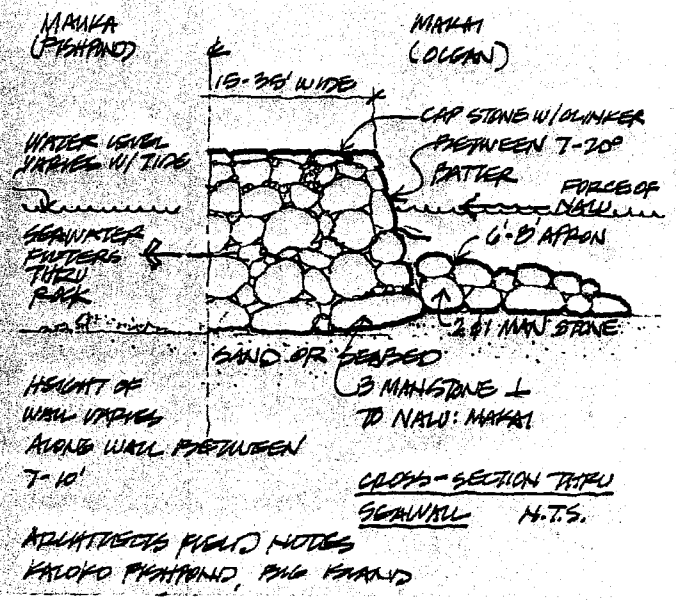
Kaloko Fishpond and Fishtrap

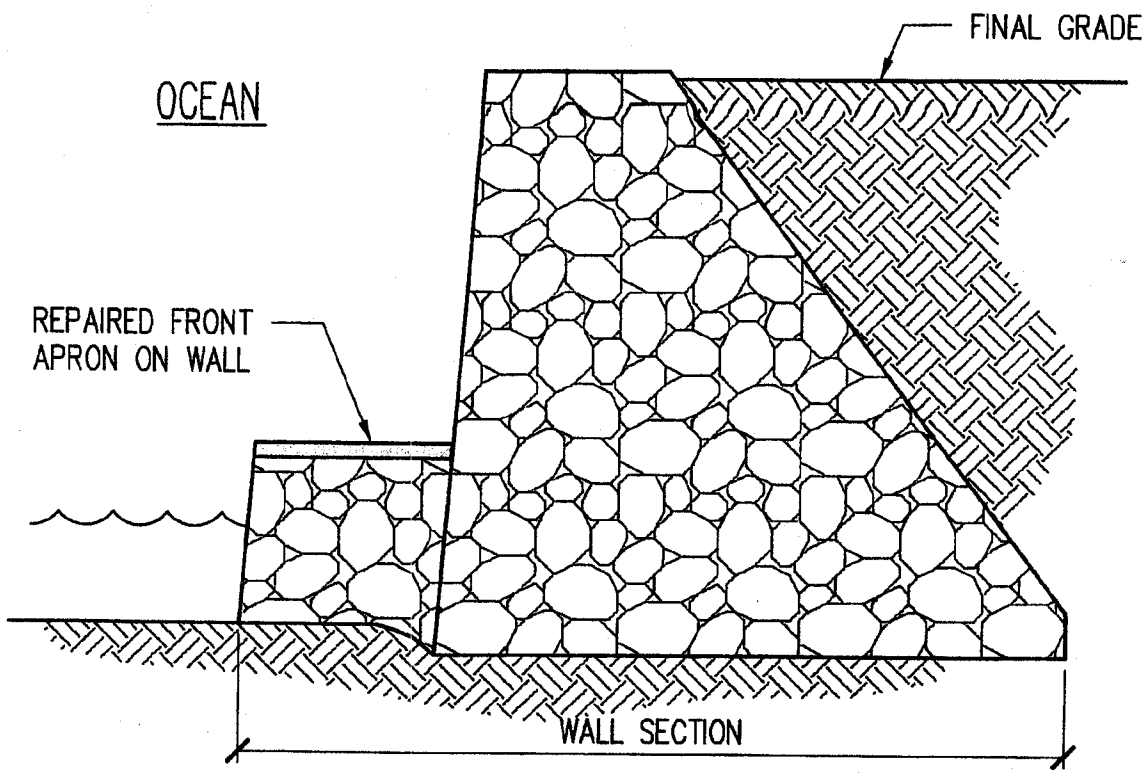
Kona Coast, Big Island of Hawai'i
1400s

One wonders why an architect would be fascinated with the stone formations of the Kaloko Fishpond and Fishtrap found on the Kona Coast of the Big Island. Certainly, the rocks are non-spatial in an architectural sense and present no spectacular form. The fishpond formation, however, is heroic in configuration and becomes even more intriguing as one understands the geographical, sociological and political context circa 1400. Further, in light of the available technology of the ancient Hawaiians, the design and engineering is in perfect balance with the understanding of the forces of nature, the ecology of seawater and the management of aquaculture.

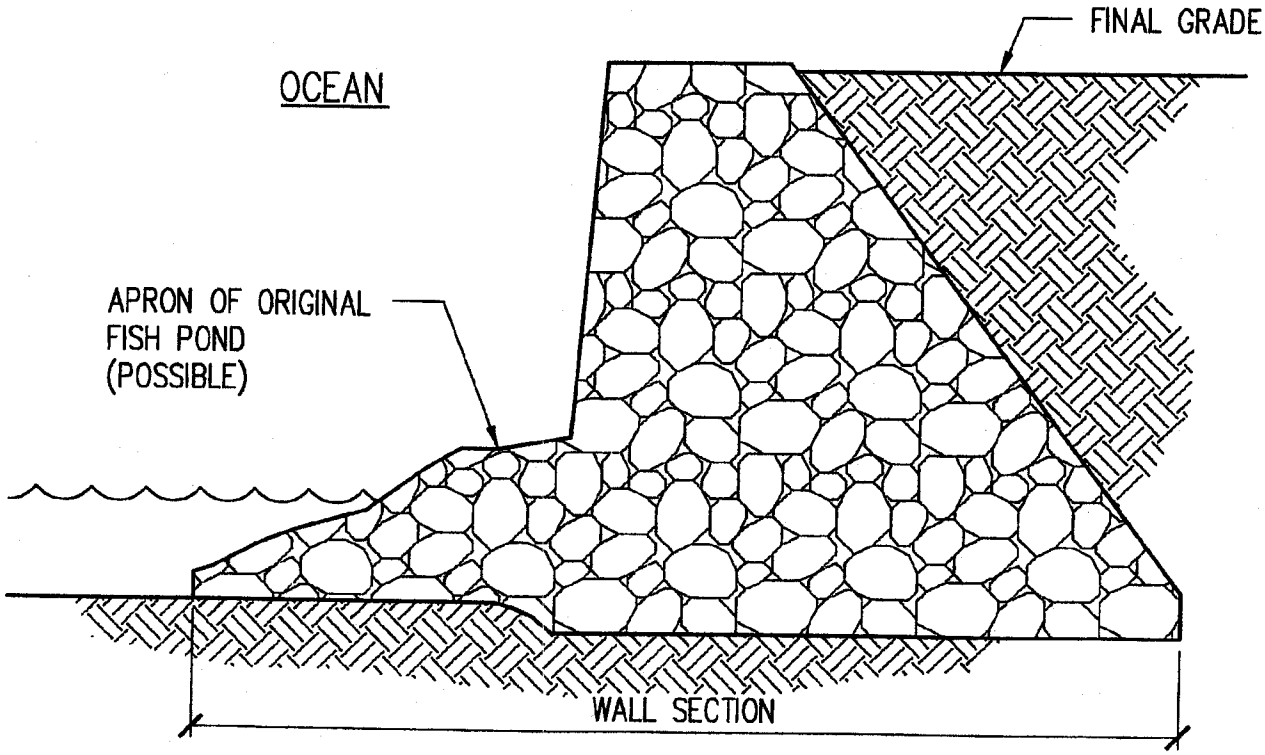
To the uninitiated eye, the rocks amassed between two seaward arms of lava flow look haphazard. Although the wall enclosing the shallow bay is straight in alignment, it is not crisp in the joinery between rocks. The groutless bearing surfaces of the rocks are minimal, leaving large gaps or *puka*. When compared to the precise "bull bearing" masonry joints of the ancient Egyptian (e.g. pyramids of Giza), Minoan, Greek, the ruins of Machu Picchu or even Mayan temples, one might assume that the Hawaiians had no particular skill for stonework.

However, this would be an unfortunate observation as the ancient Hawaiians were purposeful in their masonry and layout of seawalls. The *puka*, or voids, which run from *makai* to *mauka* within the wall, filter debris, oxygenating the seawater as it



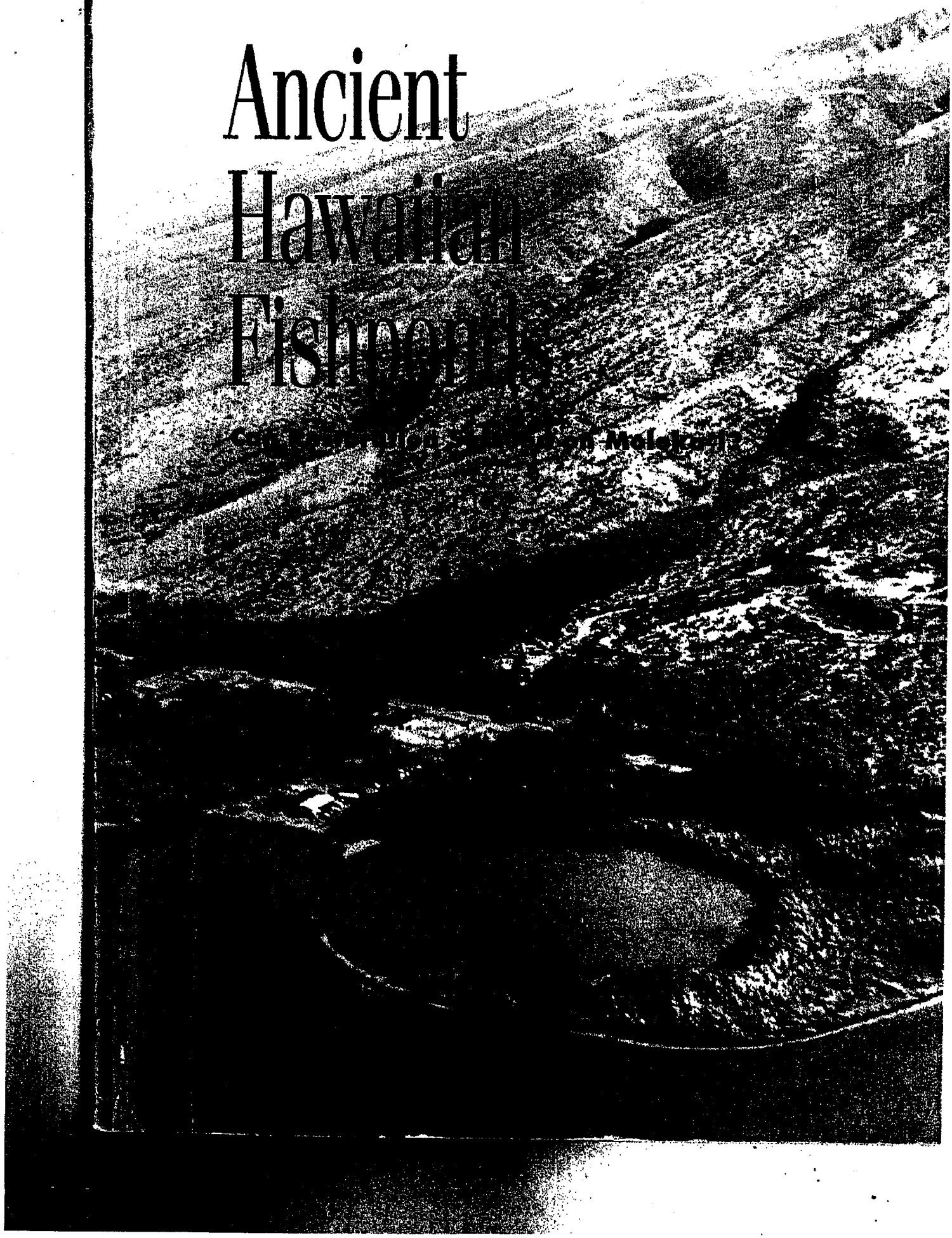


CURRENT SEA WALL SECTION



PROBABLY ORIGINAL SEA WALL SECTION

Ancient Hawaiian Fishponds



ANCIENT HAWAIIAN FISHPONDS

Can Restoration Succeed on Moloka'i?

by

Joseph M. Farber

Foreword by

Sitiveni Halapua

First Edition 1997

Neptune House Publications

Encinitas, California

Published in association with the East-West Center's

Pacific Islands Development Program

Honolulu, Hawai'i

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INTRODUCTION

The ancient fishponds of Hawai'i deserve to be saved and restored for current and future generations. These impressive structures represent one of the most significant and successful aquacultural achievements in the world—they were a major source of protein and played an important role in the spiritual and cultural lives of the Hawaiian people.

Although it is estimated that at their zenith the fishponds numbered 488, today only a handful are in active use. However, many of the abandoned fishponds remain in good shape and are capable of being revitalized.

wall. Note siltation
l Planning [DLIRP].

For more than ninety years, there have been numerous efforts to preserve and restore the fishponds. It seems every generation undertakes the effort, only to see it languish. The latest push comes from the island of Moloka'i, home to the largest number of relatively intact fishponds and a community that is, perhaps, the greatest advocate of fishpond preservation and restoration.

The Moloka'i community has articulated a vision that the fishponds be restored by and for themselves for purposes of subsistence use, cultural and historic revitalization and small businesses. However, since the fishponds lie within the sensitive coastal zone, they are only able to be restored through complex leasing and permit procedures.

A permitting process exists in Hawai'i that was put in place to protect the coastal zone from rampant development. Yet, it also prevents the fishponds from being reused. Residents are frustrated that they cannot access the ponds, care for them and practice their culture in a manner consistent with the traditions of sharing resources of land and water with their *'ohana*.

To remedy this and assist in this vision, the ponds have been studied and documented and numerous conferences and ad-hoc task force commissions have been conducted. The net results of these efforts have resulted in the identification of 31 fishponds on Moloka'i that the community wants to restore and operate themselves in a traditional manner for subsistence use and small business ventures. The State of Hawaii has undertaken the steps necessary to obtain all necessary permits and regulatory compliance. After more than two years, the State is nearing the end of this process and the resultant "conditions" attached to the permits appear to be another series of hurdles to restoration.

These requirements have increased the costs of the project, caused additional delays and have unintentionally excluded the community from participation in this critical stage of the planning process. Furthermore, such a protracted process to obtain the permits has pushed the project over into yet another new State administration and times of fiscal crises where the support for saving the fishponds is waning. It appears that once again the efforts to revive the fishponds is on the verge of failure. Is the restoration of these ancient fishponds an impossible dream?

The purpose of this book is to shed new light on this complex issue of why, after decades effort, the Hawaiian fishponds remain in a state of disrepair. I am hopeful that by uncoverir some of the reasons and their underlying causes, some realistic recommendations can be made help move the process forward to restore them and make the dream a reality.

In addition, this book may serve as a valuable insight into the overlooked issue of regulato obstacles faced by a community and their interface with such a process. The dilemma facing th Moloka'i community is a good example of regulatory risks in securing the environmental and lar use permits for a project. Regulatory risks occur due to the ambiguities of what actions are pe missible by public agencies.

There is great uncertainty on the part of the regulatory community as to the environment impact from restoring the fishponds. Even though the State has hired experts to address th issue, key regulators are reluctant to allow restoration activity to begin. Take, for instance, th water quality monitoring plan as mandated by the state's 401 Water Quality Certification requir ments for Kahinapohaku Fishpond (see Appendix A).

Many public and private water quality experts assisted me in drafting this plan when I wa an employee of the State attempting to obtain the necessary permit approvals for fishpon restoration activities on Moloka'i.

In this plan we pursued a very cautious approach to proposed activities regarding workir around and within coastal waters. Yet, although the draft water quality monitoring plan exceede the 401 certification requirements, particularly for a project of that size, regulators continue t withhold approval.

Of course there are unknowns as to exactly what the environmental impact from introducir rocks into the ocean and moving them within the fishpond basin back onto their footprint will b However, many feel these activities will be relatively benign. What is known for certain is tha the southeast coastline of Moloka'i has a constant tradewind-driven current that keeps the wate moving. In addition, any moderate rainfall creates runoff resulting in a rich brown plume of sed ment that envelops the entire southern coastline of the island, eclipsing any water quality impa that restoration may pose.

It is my opinion that the knowledge of these phenomena, compared to the possible shor term impact from rebuilding, make the extensive 401 certification requirements unwarrantec There is a need for such a plan to be administered with openness. Unfortunately, key regulato lack ability to apply flexibility and reason in their approach to permit compliance.

What is unique to the case of the Moloka'i fishponds is that the regulatory risks are, rela tively speaking, not due to public opposition to the project. Unlike the many cases that had a sig nificant challenge from environmental advocates in the community, the Moloka'i fishpon

restoration project has a broad base of support among the public and within government.

Yet in spite of this, the tangle of regulations guarding coastal resources favors those who have the means necessary to undertake such a process. These regulations prevent all but the most sophisticated and well-funded from developing within the coastal zone. Such costs unintentionally favor projects that require substantial returns on investment—hence the trend for development within the coastal zone to favor major outside private interests rather than small local private interests.

It is very frustrating to many who care deeply about saving the fishponds from extinction that such a biased regulatory process exists. Those with the money have successfully moved through the regulatory maze to both destroy fishponds and restore them. Those without the resources have not been so successful. It is for this reason that the State must continue its support of the restoration project.

Of the five fishponds that have been restored in recent years, three have successfully completed the permit process. Two of these are tied to adjoining resort development ('Anaeho'omalu and Kalāhuipua'a on the Kohala coast of the Big Island). The other (Nu'upia) is on Kane'ohe Marine Corps Base and had support of a full time environmental planner and substantial federal funds. The remaining two fishponds, restored for small-scale aquaculture production, do not have the resources necessary to obtain the proper permits and, thus, have no intention to do so.

Others have obtained the necessary permits to destroy fishponds for development purposes. These include:

- Wailupe fishpond, O'ahu, (housing subdivision) 1947;
- Kuapā pond, O'ahu, (Hawai'i Kai Marina) 1961;
- Pai'aloa fishpond, Moloka'i, (resort development) 1970;
- Waikapoki fishpond, Kane'ohe, O'ahu, (Makani Kai Marina);
- Puko'o fishpond, Moloka'i, (resort development) 1971,

Of course one could argue that destroying fishponds could never take place today as community opposition (indeed, such opposition led to withdrawal of proposals to develop Kahalu'u fishpond in 1966, Kaloko fishpond in 1971, He'eia fishpond in 1972 for resort development) and additional regulatory review would prevent such actions from taking place.

Yet, in a sense the regulatory process intended to protect the fishponds from development is inadvertently aiding in their destruction. The fishponds are in such a dynamic environment that the best way to preserve them is through their active reuse for they require continual maintenance.

As time goes by and the barriers to restoration continue, the waves, currents and tides are slowly but assuredly taking these structures back into the ocean floor. Inaction has become the

silent destroyer of the fishponds.

In researching this book, I was seemingly sidetracked by various issues such as the Mahe of 1848, the social and political structure of precontact Hawaiian society and various efforts the 1940s and 1950s to restore the fishponds. At the time, I had thought these issues were on vaguely associated with the current topic at hand—finding solutions to getting the restoration the Moloka'i ponds back on track. Yet the further I went into the past history of Hawaii and ho it related to the ancient fishponds, the more I found what I hope are some answers to this pe plexing issue.

This issue of restoring the ancient Hawaiian fishponds has been quite central to my life- personally, professionally and academically over the past few years. In the fall of 1992, I was member of the University of Hawai'i Department of Urban and Regional Planning practicun which was hired by the State Department of Land and Natural Resources (DLNR) to make sit assessments of 31 Moloka'i fishponds in an effort to complete the State Master Conservatio District Use Application.

Subsequently, from August 1994 to August 1995, I was hired by DLNR to work through th permit process to obtain the approvals necessary for the Moloka'i community to undertak restoration activities. In this position I have worked with the Moloka'i community and the var ous State, federal and local agencies involved with the permitting process. It was an eye openin experience in the reality of trying to implement what appeared to be very straightforward plannin objectives. But for all the difficulties and frustrations encountered along the way, one thin became very clear: the fishponds are worth fighting for.

The fishponds need many voices to speak up for their survival. Mine comes from the fron line trenches in the battle between environmental regulatory controls and community-based plar ning objectives that lie within the coastal zone. This perspective is unique and it is hoped tha these past experiences, as reflected upon in this book, will aid in the cause to restore the fish ponds.

Much of this book is in a narrative form, for I found the best way to understand the fishpon dilemma was to go back and study their role and function in Hawaiian society and those event that led to their ultimate demise and prevention of their rehabilitation. This demise sprung fron the introduction of global trade and foreign influences and peoples and, ultimately, changes in th land-tenure system.

As a result of such cataclysmic changes, one could effectively argue that the fishponds wer an antiquated and obsolete system of production. There are now more efficient means to obtai fish. Furthermore, the destruction of fishponds was a rational choice as the marketplace ha determined there are more economically productive uses for the sites. Yet, this western marke

based planning approach has proven to be shortsighted and ignorant of the underlying traditional, community-based, subsistence uses of land in Hawai'i. The community has reemerged as a legitimate voice in planning for their future. They desire to restore the fishponds, not only for subsistence use, but also for their cultural, historic and spiritual values. Still the dominant western form of planning and resource protection prevents the community from attaining their wishes. We need to find a way both sides can work together toward this vision.

In Section I, I give a general introduction to Hawaiian fishponds. To the uninitiated, the term "fishpond" is a bit of a misnomer. I think a more apt name for them would be fish farming complexes, for these were no mere holes in the ground but sophisticated aquaculture devices. To prove this point, I discuss their types, numbers, operation, yields and current status.

In Section II, I discuss the political and social aspects of fishponds. I think it imperative that we understand how the fishponds originally functioned and operated in the context of traditional Hawaiian society.

In the second half of the section, I discuss the social and economic changes brought about from western contact, which began in 1778 with the arrival of Captain James Cook. Within 70 years of Cook's arrival, Hawaii's subsistence economy gave way to a market-based economy trading in the global marketplace. This had a devastating effect on the fishponds.

In Section III, I review past efforts to restore the fishponds from 1901 to the present. The current effort to restore the fishponds certainly is not the first time such an effort has been undertaken, but it's community-based perspective is unique.

Restoration by the community seems to be a logical approach as, traditionally, these resources always have been successfully managed by community resources, not private enterprise. What were the successes and failures of the past? Why do the efforts repeatedly seem to go nowhere? Is there something we can learn from this?

Section IV concerns strategies to fishpond restoration. I discuss the traditional planning approach and the community-based approach to development. I compare the two and place them within the context of the political-economy of Hawai'i and the effects such planning has on the State and the fishponds.

Section V discusses obstacles to restoration that include permit complexity, economics and organizational capacity. Drawing on my experience dealing with the regulatory processes of the State of Hawaii, I make some suggestions based on this information to, it is hoped, help move the restoration process forward.

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